

nonsuit in replevin in no manner settles the question of title, and Kilty in his Report clearly treats this part of the Act as subsisting. Indeed, the form of the writ *de retorno habendo* on *non pros* of the plaintiff in replevin, after reciting the judgment, commands the Sheriff to cause the said goods, &c., to be returned, &c., and that he is not to deliver them again on complaint of the plaintiff, "without the writ of the State of Maryland, which shall make express mention of the judgment aforesaid," &c., 2 Evans' Harris, 456.

Where the defendant in replevin succeeds on demurrer,²³ or has a verdict upon pleas that disaffirm the property of the plaintiff, or there is a confession of an avowry, judgment is entered for a return, which in these cases where the defendant succeeds, is, since this Statute, necessarily irreplevisable, Gamon v. Jones, 4 T. R. 509, for the Court has given judgment upon the lawfulness of the caption and the right of the parties. But where the plaintiff's writ only abates, then he may have a new one, Bac. Abr. Replevin, E. 3. This Statute restrains the plaintiff from any more replevins after a *nonsuit*, but as there has been in this case no determination of the matter, it gives him a writ of *second deliverance*. Upon this, if he be nonsuit again, or if the proceedings be discontinued, or the writ abate, or if he do not succeed in the suit, a return is granted irreplevisable, 2 Inst. 341. In avowries for rent, the writ of second deliverance is in effect abolished by Stat. 17 Car. 2, c. 7, *g. v.*; because the avowant may have judgment for the arrears of rent and costs without any return, on which he may issue execution for the whole rent or the value of the distress, Bull. N. P. 58, but if he take judgment at common law for a return, as he may do, then the writ lies. And so, though the writ is a *supersedeas* to a *retorno habendo*, and stays the Sheriff from making a return, yet when the defendant has avowed, it is no stay to a writ of inquiry of damages, &c., under Stat. 21 H. 8, c. 19, for these damages are given as a compensation for the trouble and expense the avowant has undergone, Pratt v. Rutledge, 1 Salk. 95.

The proceedings on the writ of second deliverance are exactly like those in replevin, except that the defendant is summoned to answer the writ of *second deliverance*. The writ must issue out of the same Court where the first replevin was granted, and not elsewhere, and it must not vary from the first in year, day, place, or number of beasts, Bac. Abr. Replevin, E. 3. And where it was alleged for error on a judgment in second deliverance, that there was no writ of second deliverance certified, and it was insisted not to be material, because it was awarded on the roll, and the parties had appeared and pleaded to it, the judgment was reversed, because there ought to be a writ, and if it vary from the declaration in replevin it shall be abated, Newman v. More, Cro. Jac. 424.

²³ An appeal does not lie from a judgment sustaining a demurrer to a replication in an action of replevin, as such judgment is not final. Deitrich v. Swartz, 41 Md. 196.

Replevin before justices of the peace.—See Code 1911, Art. 52, secs. 50-53; Deitrich v. Swartz, 41 Md. 196; State v. Carrick, 70 Md. 586; Heinekamp v. Beaty, 74 Md. 388, 393; Darrell v. Biscoe, 94 Md. 684.